Remarks

Claims 1, 4, 7, 12-16 and 18 have been amended. Claims 19 and 20 have been cancelled. Support for the amendments to the claims can be found in general throughout Applicants' Specification and in particular, for example, as follows: claims 1 and 16, page 4, lines 14-16. The amendments to claims 4 and 18 are not related to patentability. The amendments to claims 7 and 12-15 make express that which was implicit and are not related to patentability. Applicants reserve the right to prosecute the amended claims in their original form in a continuing application.

Applicants thank the Examiner for her helpful suggestions regarding the amendments to claims 4, 7, 12-15 and 18. Applicants submit that the amendments to claims 4, 7, 12-15 and 18 render moot the rejections pertaining thereto under 35 U.S.C. § 112, second paragraph.

Claims 1-5, 10-15 and 21-24 stand rejected under 35 U.S.C. § 102(e) over Phillips (U.S. 2003/0180389)

Phillips discloses a granular composition that includes glucosamine, chondroitin sulfate and sulfur in an effervescent base. Phillips discloses that the glucosamine can be provided as glucosamine sulfate in a dose of 1500 mg. Phillips also discloses that the effervescent base includes an acidic ingredient and a basic ingredient.

Claim 1 is now directed to an effervescent composition that includes glucosamine, chondroitin derived from bovine, and an effervescent agent. A key property of an effervescent formulation is that it be palatable to a consumer. Chondroitin tends to have a bad taste, which renders it unpalatable (see, Applicants' Specification, page 1, lines 11-13). Chondroitin is available from a variety of sources. Applicants have discovered effervescent compositions that include chondroitin derived from a bovine source are more palatable relative to effervescent compositions that include chondroitin obtained from shark and porcine sources (*Id.*, page 4, lines 14-16). Phillips does not teach chondroitin derived from a bovine source. Phillips also does not recognize the benefit of chondroitin derived from a bovine source. Applicants submit, therefore, that the rejection of claim 1 under 35 U.S.C. § 102(e) over Phillips has been overcome and respectfully request that it be withdrawn.

Claims 2-5, 10-15, and 21-24 are distinguishable under 35 U.S.C. § 102(e) over Phillips for at least the same reasons set forth above in distinguishing claim 1.

The cancellation of claims 19 and 20 renders moot the rejection of the same under 35 U.S.C. § 102(e) over Wehling (U.S. 6,811,793).

Claims 1-5, 8-15 and 21-24 stand rejected under 35 U.S.C. § 103 over Wehling

Wehling discloses a tablet that includes stevia, water soluble binder, water soluble lubricant, active agent and effervescent agent. Wehling discloses that the active agents include vitamin, amino acid, pharmaceutical agent, mineral, dietary supplement and combinations thereof. Wehling also discloses that suitable dietary supplements include glucosamine and chondroitin.

Claim 1 is now directed to an effervescent composition that includes glucosamine, chondroitin derived from a bovine source, and an effervescent agent. Applicants note that Wehing was filed before but published after the filing date of the above-captioned application. In particular, Wehling was filed on March 11, 2002, and published on November 2, 2004, whereas the above-captioned application was filed on July 11, 2003. As such, Wehling is only available as a reference under 35 U.S.C. § 102(e). Applicants also note that:

> Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person, or subject to an obligation of assignment to the same person.

35 U.S.C. § 103(c). Applicants submit that the above-captioned application and U.S. Patent 6,811,793 (Wehling) were, at the time the invention was made, owned by and subject to an obligation of assignment to the same person, i.e., Amerilab Technologies, Inc. This is further demonstrated by the Assignment documents that are recorded for U.S. Patent 6,811,793 at reel/frame 021835/0222 and for the above-captioned application at reel/frame 015152/0491. As such, Wehling is not available as a prior art reference under 35 U.S.C. § 103. Applicants submit, therefore, that the rejection of claims 1 -5, 8-15 and 21-24 under 35 U.S.C. § 103 over Wehling is unwarranted and respectfully request that it be withdrawn.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103 over Phillips in view of Fox (U.S. 2001/0018082).

The discussion of Phillips set forth above is incorporated herein.

Fox disclose calcium supplements that employ mixtures of calcium salts, citric acid and malic acid. Fox disclose that the supplements can be in the form of tablets, capsules, granules, and powders and can provide an effervescent effect when deposited in a liquid medium.

Claims 6 and 7 depend from claim 1 and require chondroitin derived from a bovine source. Neither Phillips nor Fox teach or suggest chondroitin derived from a bovine source. Applicants submit, therefore, that the rejection of claims 6 and 7 under 35 U.S.C. § 103 over Phillips in view of Fox has been overcome and respectfully request that it be withdrawn.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103 over Wehling in view of Fox. As established above, Wehling is not available as a reference under 35 U.S.C. § 103. Applicants submit therefore that the rejection of claims 6 and 7 under 35 U.S.C. § 103 over Wehling in view of Fox is unwarranted and respectfully request that it be withdrawn.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103 over Phillips in view of Little (U.S. 1,616,587).

The discussion of Phillips set forth above is incorporated herein.

Little disclose methods of manufacturing effervescent alkali compounds.

Claims 8 and 9 depend from claim 1 and require chondroitin derived from a bovine source. Neither Phillips nor Little teach or suggest chondroitin derived from a bovine source. Accordingly, Applicants submit that the rejection of claims 8 and 9 under 35 U.S.C. § 103 over Phillips in view of Little has been overcome and respectfully request that it be withdrawn.

Claims 16-18 stand rejected under 35 U.S.C. § 103 over Phillips in view of Fox and in further view of Little.

The discussion of Phillips set forth above is incorporated herein.

The discussion of Fox set forth above is incorporated herein.

The discussion of Little set forth above is incorporated herein.

Claims 16-18 have been amended to require chondroitin derived from a bovine source. Neither Phillips nor Fox nor Little teach or suggest chondroitin derived from a bovine source. Accordingly, Applicants submit that the rejection of claims 16-18 under 35 U.S.C. § 103 over Phillips in view of Fox and further in view of Little has been overcome and respectfully request that it be withdrawn.

Claims 16-18 stand rejected under 35 U.S.C. § 103 over Wehling in view of Fox and in further view of Little. As has been established above, Wehling is not an available as a reference under 35 U.S.C. § 103. Accordingly, the proposed combination of Wehling, Fox and Little cannot render claims 16-18 *prima facie* obvious. Applicants submit therefore that the rejection of claims 16-18 under 35 U.S.C. § 103 over Wehling in view of Fox and in further view of Little is unwarranted and respectfully request that it be withdrawn.

The claims now pending in the application are in condition for allowance and such action is respectfully requested. The Examiner is invited to telephone the undersigned should a teleconference interview facilitate prosecution of this application.

Please charge any additional fees that may be required or credit any overpayment made to Deposit Account No. 501,171.

Respectfully submitted,

Date: January 5, 2007

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